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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
PICH, PONNOREAY	
ART UNIT	**PAPER NUMBER**
2135	

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/056,982	HOFFMAN, NED	
	Examiner	Art Unit	
	Ponnoreay Pich	2135	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 May 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *60-110* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *60-110* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/25/2006 has been entered. The response filed on 5/25/2006 is a supplemental response by applicant further adding new claims and further amending claims previously added after final.

Claims 1-59 were cancelled. Claims 60-105 are pending. Applicant's amendments and arguments have been noted, but are moot in view of new rejections presented below.

Claim Objections

Claim 70 is objected to because of the following informalities: There should be an "of" before "registration" in line 5 of claim 70. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 60-81, 80, and 95-103 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1. Claim 60 recites "the currently stored registration biometric samples" in lines 4-5. It is unclear to which currently stored registration biometric samples of the set of currently stored biometric samples are being referred or if all of the samples in the set are being referred to. Claim 95 recites similar limitations and is indefinite for the same reason as claim 60. Subsequent recitation of "the currently stored registration biometric samples" in claims 60, 95, and their dependent claims are indefinite for the same reasons.
2. Claim 67 recites "the registration biometric samples" in lines 4-5. It is unclear to which registration biometric samples of the currently stored set of registration biometric samples are being referred to or if all of the samples in the set are being referred to. Subsequent recitation of "the registration biometric samples" in claim 67 and its dependent claims are indefinite for the same reasons.
3. Claim 76 recites "the registration biometric samples" in lines 2-3. It is unclear which of the set of registration biometric samples is being referred to by "the registration biometric samples".
4. Claim 76 recites a database "to store...", a network component "to receive...", and a comparator component "to compare...". The language of "to store...", "to receive...", and "to compare..." appears to indicate an intended use of the components of the system of claim 76. It is unclear, however, if these

components actually performs the actions as recited by the intended use language. Claims 77-81 recites that the system or components of the system are "operable to" perform certain actions. It is also unclear if the system and components actually perform these actions or if they are merely intended to be able to do so.

5. Claim 80 recites "the central computer system", which lacks antecedent basis.
6. Claim 95 recites "the currently stored registration biometric samples" in lines 3-4. It is unclear to which currently stored registration biometric samples of the set of currently stored biometric samples are being referred.
7. Any claims not specifically addressed are rejected due to dependency.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 76-82 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

1. Claim 76 recites an identification system comprising a database, a network component, and a comparator component. One skilled should appreciate that a database can refer to software alone, i.e. SQL or Microsoft Access database. A network component which receives and outputs data over a communication link can also refer to software alone, i.e. email or FTP programs are software which

sends and receives data over a communication link. Further, comparison can be done via software alone as a comparator component. As such, it appears that the identification system of claim 76 can refer to software per se, which is not patentable. Applicant must recite a component containing hardware as part of the system of claim 76 for the system to be statutory. Claims 77-82 are dependent on claim 76 and also do not recite any hardware, thus are also not statutory.

Observations with Regards to Apparatus Claims

Note that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danley, 120 USPQ 528, 531 (CCPA 1959). "Apparatus claims cover what a device is, not what a device does." (Emphasis in original) Hewlett – Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 60-110 are rejected under 35 U.S.C. 102(a) as being anticipated by Dunlevy (EP 0598469A2).

Claims 60 and 95:

Dunlevy discloses:

1. Receiving a biometric sample from an individual (Fig 2, step 50 and 64).
2. Locating a set of currently stored registration biometric samples, the currently stored registration biometric samples provided by at least two registered individuals (Fig 2, step 50 and col 5, line 47-col 6, line 5).
3. Comparing the received biometric sample with at least one of the currently stored registration biometric samples in the set of currently stored registration biometric samples to find a match (Fig 2, step 58; col 8, lines 25-35; col 10, lines 48-54; and col 11, lines 31-56).
4. Transmitting a confirmation of the match (Fig 4, step 128 and col 10, lines 48-54).

Claim 60 is a method claim while claim 95 is directed towards a computer readable media storing software to implement the method of claim 60.

Claim 67:

Dunlevy discloses:

1. Receiving a biometric sample from an individual (Fig 2, step 50 and 64).

2. Locating a set of currently stored set of registration biometric samples, the registration biometric samples provided by at least two registered individuals (Fig 2, step 50 and col 5, line 47-col 6, line 5).
3. Comparing the received biometric sample with a subset of the currently stored set of registration biometric samples to produce an evaluation (Fig 2, step 58; col 8, lines 25-35; col 10, lines 48-54; and col 11, lines 31-56).
4. Transmitting the evaluation (Fig 4, step 128 and col 10, lines 48-54).

Claims 61, 68, 71, 74, 96, and 101:

Dunlevy further discloses receiving a personal identification code from the individual (col 5, line 47-col 6, line 1; col 7, lines 33-57; and col 8, lines 25-29).

Claims 62, 72, 75, 97, and 102:

Dunlevy further discloses wherein locating a set of currently stored registration biometric samples includes locating the set of currently stored registration biometric samples associated with the personal identification code (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claims 63 and 98:

Dunlevy further discloses receiving a new registration biometric sample for the individual during a registration step; and string the new registration biometric sample in the set of currently stored registration biometric samples (Figures 1-2 and col 8, lines 36-48).

Claims 64 and 99:

Dunlevy further discloses receiving a personal identification code for the individual during the registration step (col 8, lines 21-48).

Claims 65 and 100:

Dunlevy further discloses wherein storing the new registration biometric sample includes storing the new registration biometric sample in the set of currently stored registration biometric samples associated with the personal identification code (col 8, lines 21-48).

Claims 66, 73, and 103:

Dunlevy further discloses wherein the identification method is conducted without the individual presenting any smartcards or magnetic swipe cards (Figures 1-2). Note that identification is done using only voice identification via a telephone and touch tones on the telephone, thus no cards are presented for identification.

Claim 69:

Dunlevy further discloses wherein each of the registration biometric samples is associated with a personal identification code from the individual (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claim 70:

Dunlevy further discloses:

1. The method further comprises receiving a personal identification code from the individual (col 5, line 47-col 6, line 1; col 7, lines 33-57; and col 8, lines 25-29).
2. Comparing the received biometric sample includes comparing the received biometric sample with a subset of the currently stored set of registration biometric

samples associated with the personal identification code to produce the evaluation (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claim 76:

As per claim 76, Dunlevy discloses a database (col 5, line 47-col 6, line 5), a network component (Fig 6), and a comparator component (Fig 2, step 58). Further, note that claim 76 is a system which is to implement the method of claim 60. As such, Dunlevy discloses not only the structure of the system of claim 76, but also the intended use of the structure of claim 76.

Claim 77:

Dunlevy further discloses wherein the network component is operable to receive a personal identification code from the individual over the communication link (col 5, line 47-col 6, line 1; col 7, lines 33-57; and col 8, lines 25-29).

Claim 78:

Dunlevy further discloses wherein the comparator component is operable to compare the biometric data from the individual with a subset of the registration biometric samples associated with the personal identification code from the individual to determine the identity of the individual (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claim 79:

Dunlevy further discloses wherein the network component is operable to receive a registration biometric sample for the individual and store the registration biometric

sample in the database (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-48).

Claim 80:

Dunlevy further discloses wherein the network component is operable to receive the registration biometric sample for the individual a registration personal identification code for the individual and to associate the registration biometric sample with the registration personal identification code in the database (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-48).

Claim 81:

Dunlevy further disclose wherein a central computer system is operable to receive the personal identification code from the individual over the communication link, and locate the set of biometric samples associated with personal identification code (col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claim 82:

Dunlevy further discloses wherein the identification system is designed to operate without the individual presenting any smart cards or magnetic smart cards (Figures 1-2).

Claims 83 and 104:

Dunlevy discloses:

1. Gathering biometric information from an individual for a transaction (Fig 2, step 50 and 64).

2. Transmitting the biometric information to an indicator via an output port (Fig 2, steps 50 and 64).
3. Receiving from the indicator data associated with the individual (Fig 4, step 128; col 8, lines 36-48; and col 10, lines 48-54).
4. Using the data associated with the individual to perform the transaction (Fig 4, step 128; col 8, lines 36-48; and col 10, lines 48-54).

Claim 104 is directed towards a computer readable storage media storing software to implement the method of claim 83.

Claims 84 and 105:

Dunlevy further discloses wherein the biometric information includes a biometric sample (col 1, lines 46-53). Voice sample is a biometric sample.

Claims 85 and 106:

Dunlevy further discloses wherein the biometric information includes a personal identification code (col 1, lines 46-53; col 5, line 47-col 6, line 5; col 7, lines 33-57; and col 8, lines 25-29).

Claims 86 and 107:

Dunlevy further discloses gathering a registration biometric sample received from the individual; and transmitting the registration biometric sample to the indicator via the output port (col 8, lines 1-48).

Claims 87 and 108:

Dunlevy further discloses determining a personal identification code for the individual; and transmitting the personal identification code to the indicator via the output port (col 7, lines 33-57 and col 8, lines 25-29).

Claims 88 and 109:

Dunlevy further discloses wherein gathering the biometric information from the individual includes gathering the personal identification code from the individual (col 7, lines 33-57 and col 8, lines 25-29).

Claims 89 and 110:

Dunlevy further discloses wherein the identification method is conducted without the individual presenting any smartcards or magnetic swipe cards (Figures 1-2).

Claim 90:

Dunlevy discloses:

1. A local computer system including an output port to transmit biometric data from an individual onto a communication link and an input port to receive data associated with the individual from the communication link (Fig 6).
2. An output device within the local computer system to use the data associated with the individual to perform a transaction (Fig 6, item 486).

Claim 91:

Dunlevy further discloses a biometric input device, i.e. telephone receiver, to receive the biometric data from the individual, the local computer system operative to control the biometric input device (Fig 6).

Claim 92:

Dunlevy further discloses an alphanumeric input device coupled to the local computer system for the individual to input alphanumeric data, the local computer operative to transmit the alphanumeric data via the output port (col 7, lines 33-57). Touch tone telephones contains alphanumeric pads.

Claim 93:

Dunlevy further discloses wherein the output device is operable to indicate the data associated with the individual (Fig 4 and col 10, lines 48-54).

Claim 94:

Dunlevy further discloses wherein the identification system is operative without the individual presenting any smartcards or magnetic swipe cards (Figures 1-2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ponnoreay Pich whose telephone number is 571-272-7962. The examiner can normally be reached on 9:00am-4:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on 571-272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ponnoreay Pich
Examiner
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